

Vancouver, with a population of less than 50,000, lies directly across the Columbia River from Portland, Oregon. Because of the much larger Oregon population in the market, virtually all of the local television programming is directed to an Oregon audience. Vancouver itself is isolated from the rest of the State of Washington by the Cascade Mountain Range.

In response to this isolation, Columbia developed a separate channel on its cable system devoted to programming of specific interest to Washington State residents. The programming on this "Washington State Network Channel" consists of news and public affairs programs originated and owned by television stations in Seattle and Tacoma. Columbia has private agreements with these stations allowing delivery of the Washington oriented programming to cable subscribers in Clark County. This is a highly popular service especially for natives of King and Olympia Counties who now live in Clark County. Columbia's service provides the only source of Washington news from a Washington-based broadcast network (radio or television) in Clark County.

Act would be prohibitive and it does not have the channel capacity or an interest in carrying the full broadcast schedule of each station. Moreover, the local Portland stations have non-duplication and exclusivity rights under FCC rules and could require Columbia to black out most of those stations' programming, leaving little more than what Columbia carries already. The existing arrangement of including locally originated programming on a single channel works and has served the Clark County residents well.

As initially described by the Commission, Section 614(b)(3)(B) of the 1992 Cable Act requires a cable operator to carry the "entire program schedule of any television station included on its system" and this interpretation is incorporated into Rule §76.62(a). See also Footnote 234 of the Report and Order. Without some logical exception, this will require Columbia to discontinue its Washington State Network Channel and cease carriage of the Washington state programming. As discussed, Columbia does not have the room and cannot afford to carry the Seattle/Tacoma stations in their entirety, nor would such carriage result in much additional programming due to the Commission's blackout rules.

**B. THE RULE SHOULD NOT APPLY
RETROACTIVELY TO EXISTING AGREEMENTS**

Newly enacted statutes are presumed to operate prospectively, not retroactively. Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 841 (1990). A statute is to be strictly construed against retroactive operation. Congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988). See also, Bennett v. New Jersey, 470 U.S. 632, 641 (1985); Greene v. United States, 376 U.S. 149, 160 (1964). The intent to apply a statute retroactively must be expressly declared or necessarily and unavoidably implied from its language. James Cable Partners L.P. v. City of Jamestown, ___ F.Supp. ___, (MD Tenn., April 7, 1993). The James Cable decision reviewed the 1992 Cable Act.

**C. CONSENT OF THE ORIGINATING
STATION SHOULD BE ALLOWED**

In the absence of a "grandfathering" provision, Rule §76.62(a) should not apply to stations which consent to partial carriage of their signals. Section 614(b)(3)(B) of the Act is described as an anti-"cherry picking" provision. House Report 102-628 (June 29, 1992) at 93. But "cherry picking" occurs in the absence of consent from the originating station. It is not "cherry picking" when a station consents to it. No violation of any intent of Congress or the purpose or policy of Section 614(b)(3)(B) would occur should the Commission allow the originating station to consent to partial carriage.

D. WAIVER SHOULD BE ALLOWED

In the absence of the requested revisions to Rule §76.62(a), we ask that the Commission declare that it will entertain requests for waiver or special relief where the petitioner can demonstrate that the underlying policies will be preserved and that the public interest will be advanced. Columbia is confident that Congress had no intention of forcing services such as the Washington State Network Channel off the air. Columbia is fully prepared to present its case in a special relief proceeding and requests the opportunity to do so.


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In summary, Columbia seeks the Commission's assistance in finding a way to keep its Washington State Network Channel on the air. A finding that existing agreements are grandfathered is the simplest approach. Alternatively, allowing the consent of the originating station to partial carriage of the station is a viable solution. Special relief proceedings are also acceptable.

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